



STATE BOARD OF EQUALIZATION

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Executive Director

March 7, 1990

Dear

This is in furtherance of our February 26, 1990 meeting and your subsequent telephone request wherein you asked that we set forth the basis for our opinion that, under California property tax law, property owned by cooperative housing corporations, including limited equity cooperative housing corporations*, and eligible for the homeowners' exemption from property taxation under Revenue and Taxation Code section 218 is not property used exclusively for rental housing and related facilities within meaning of Revenue and Taxation Code Section 214(g) and hence, is ineligible for the welfare exemption from property taxation.

Section 218 provides, among other things, that "owner" for purposes of the homeowners' exemption includes a person who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling. As members in cooperative housing corporations,

* Per Section 1.25B, Limited Equity Housing Cooperatives, of the 1984 California Continuing Education of the Bar publication California Condominium And Planned Development Practice, limited equity housing cooperatives are a recent creation of state law designed to provide ownership housing for low and moderate income residents. Basically, a limited equity housing cooperative is a stock cooperative that meets the additional criteria of being organized for a public purpose (i.e., either as a nonprofit corporation, or the real property on which it is built will revert to public or charitable ownership on termination of the corporation; Health & Safety Code section 33007.5(a)), and containing in its articles or by laws specified limitations on the equity that can be realized on a sale of shares or a membership interest is the corporation. Business and Profession code section 11003.4; Health & Safety Code section 33007.5. (emphasis added)

March 7, 1990

including limited equity cooperative housing corporations, are deemed to be owners of property for purposes of California property tax law, such persons are able to claim and receive the homeowners' exemption for their residences.

Conversely, section 214, which provides for the welfare exemption, states that property used exclusively for charitable purposes owned and operated by corporations organized and operated for charitable purposes is exempt from taxation if certain requirements are met. Until 1988, housing for lower income households, of itself, was not eligible for the welfare exemption. Stats. 1987, Chap. 1469, in effect January 1, 1988, however, added subdivision (g) to section 214 to provide that:

Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower-income households is of the total property in any year in which any of the criteria specified therein are applicable.

When adding subdivision (g) to section 214, the Legislature did not state that property owned by cooperative housing corporations and/or limited equity cooperative housing corporations was being used or deemed to be used exclusively for rental housing within the meaning of the subdivision. Neither did the Legislature include a caveat in subdivision (g) to the effect that notwithstanding the provision in section 218 that "owner" includes a person who holds shares or membership in a cooperative housing corporations, property owned by cooperative housing corporations and/or limited equity cooperative housing corporations is housing used or deemed to be used exclusively for rental housing within the meaning of the subdivision. Neither did the Legislature delete the provision in section 218 that defines "owner" as including a person who holds shares or membership in a cooperative housing corporation.

Accordingly, notwithstanding the addition of subdivision (g) in 1988, section 218 provided and continues to provide that persons holding shares or membership in a cooperative housing corporation are owners of their respective portions of the

March 7, 1990

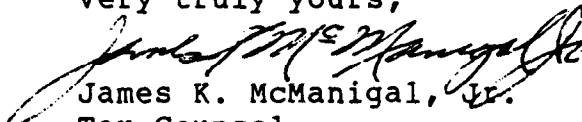
corporation's property and eligible for the homeowners' exemption for purposes of California property tax law. In our view, the homeowners' exemption is the only property tax exemption available to persons holding shares or membership in a cooperative housing corporation, as the Legislature has continued to view such corporations as providers of ownership housing rather than rental housing.

As we discussed, while persons holding shares or membership in such corporations are eligible for the homeowners' exemption, we have been advised by Franchise Tax Board staff that that Board also regards persons holding shares or membership in cooperative housing corporations or in limited equity cooperative housing corporations as owners rather than renters and thus, such persons are not eligible for the renter's credit administered by that Board, which credit is an income tax credit available to renters of property and designed to offset the tax benefits homeowners enjoy when granted the homeowners' exemption.

Finally, as we discussed, we are aware of no statute or property tax case which states or holds that a person can be both an owner and a renter at the same time for purposes of California property tax law. To the contrary, Article XIII, section 3(k) of the California Constitution, which authorizes the homeowners' exemption and which states that if the Legislature increases the homeowners' exemption it shall provide increases in benefits to qualified renters (renter's credit), as defined by law**; section 218, which states that "owner" includes a person who holds shares or membership in a cooperative housing corporation; and the Franchise Tax Board's staff's advice that that Board does not regard persons holding shares or membership in cooperative housing corporations or in limited equity cooperative housing corporations to be renters eligible for the renter's credit are exemplary of the longstanding differentiation between homeowners and renters under California property tax law.

** As defined by Revenue and Taxation Code section 17053.5, a "qualified renter" is an individual who rented and occupied premises in this state which constituted his or her principal place of residence during at least 50 percent of the taxable year.

Very truly yours,


James K. McManigal, Jr.
Tax Counsel

JKM:mw/3112H

March 7, 1990

cc: Mr. John Hagerty
Mr. Verne Walton
Mr. James Barga
Mr. Bill Minor